

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1491

Citations Affected: IC 3-9-2-14; IC 33-25-1; IC 33-33-71; IC 33-35; IC 33-36.

Synopsis: Courts and court officers. Conference committee report for EHB 1491. Establishes the Sixth District of the court of appeals of Indiana as of July 1, 2011. Provides that the entire state constitutes the Sixth District. Requires the nonpartisan election of superior court judges in St. Joseph County. Continues the terms of the St. Joseph superior court judges in office on June 30, 2009, until the date the judges' terms will end under the law in effect on June 30, 2009. Provides that a candidate for judge of the St. Joseph superior court may not accept certain political contributions. Repeals provisions concerning judicial retention elections in St. Joseph County. Allows a city or town that has not established a city or town court or an ordinance violations bureau to enter into an interlocal agreement with a city, town, or other municipal corporation that has established: (1) a city or town court; or (2) an ordinance violations bureau; to hear and dispose of ordinance violations that would otherwise come under the jurisdiction of a city or town court or an ordinance violations bureau established by the city or town. **(This conference committee report: (1) specifies that campaign contribution limits concerning St. Joseph superior court judgeships do not apply to the candidates themselves; (2) delays the establishment of the Sixth District of the court of appeals from January 1, 2011, to July 1, 2011; and (3) adds provisions concerning interlocal agreements on courts.)**

Effective: July 1, 2009; July 1, 2011.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1491 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 3-9-2-14 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2009]: **Sec. 14. (a) This section does not apply to contributions**
- 5 **made by a candidate for judge of the St. Joseph superior court to**
- 6 **pay expenses connected with the candidate's candidacy.**
- 7 **(b) A candidate for judge of the St. Joseph superior court may**
- 8 **not accept:**
- 9 **(1) a contribution from any political party, political action**
- 10 **committee, or regular party committee; or**
- 11 **(2) contributions that total more than:**
- 12 **(A) five hundred dollars (\$500) from one (1) individual;**
- 13 **(B) one thousand dollars (\$1,000) from two (2) or more**
- 14 **individuals associated with one (1) law firm; or**
- 15 **(C) ten thousand dollars (\$10,000) from all sources;**
- 16 **to pay expenses connected with the candidate's candidacy.**
- 17 SECTION 2. IC 33-25-1-1 IS AMENDED TO READ AS
- 18 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1. The court of appeals**
- 19 **consists of ~~fifteen (15)~~ eighteen (18) judges, who serve for the hearing**
- 20 **and decision of causes in ~~five (5)~~ six (6) geographic districts described**
- 21 **in section 2 of this chapter under Article 7, Section 5 of the**
- 22 **Constitution of the State of Indiana.**

SECTION 3. IC 33-25-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. Indiana is divided into ~~five (5)~~ **six (6)** geographic districts, which shall be designated as the "court of appeals - First District; Second District; Third District; Fourth District; ~~and Fifth District;~~ **and Sixth District**" as follows:

(1) First District: Bartholomew, Boone, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, Dubois, Fayette, Floyd, Fountain, Franklin, Gibson, Greene, Hancock, Harrison, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Martin, Monroe, Montgomery, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Warrick, Washington, and Wayne.

(2) Second District: Adams, Blackford, Carroll, Cass, Clinton, Delaware, Grant, Hamilton, Howard, Huntington, Jay, Madison, Marion, Miami, Tippecanoe, Tipton, Wabash, Wells, and White.

(3) Third District: Allen, Benton, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben, Warren, and Whitley.

(4) The entire state constitutes the Fourth District.

(5) The entire state constitutes the Fifth District.

(6) The entire state constitutes the Sixth District.

SECTION 4. IC 33-25-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) Judges of the First, Second, and Third Districts of the court of appeals must have resided in their respective districts before appointment to the court. However, judges of the court of appeals appointed before July 1, 1993, must reside in the district from which they are appointed.

(b) The following requirements apply to judges of the Fourth, ~~and Fifth,~~ **and Sixth** Districts of the court of appeals:

(1) One (1) judge must have resided in the First District before appointment to the court.

(2) One (1) judge must have resided in the Second District before appointment to the court.

(3) One (1) judge must have resided in the Third District before appointment to the court.

(c) When a vacancy is created in the court of appeals, the individual who is appointed by the governor to fill the vacancy must be a resident of the district in which the vacancy occurred.

SECTION 5. IC 33-33-71-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **(a)** There is established a superior court in St. Joseph County.

(b) The court consists of eight (8) judges, **who shall be elected in nonpartisan elections every six (6) years in St. Joseph County as provided in section 5.3 of this chapter.**

(c) The term of a judge begins January 1 following the judge's election and ends December 31 following the election of the judge's successor.

SECTION 6. IC 33-33-71-5.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2009]: **Sec. 5.3. (a) Each of the eight (8) St. Joseph superior court judges shall be elected in nonpartisan elections every six (6) years.**

(b) During the period under IC 3-8-2-4 in which a declaration of candidacy may be filed for a primary election, a person who desires to become a candidate for one (1) of the eight (8) judgeships described in subsection (a) must file with the election division a declaration of candidacy:

(1) adapted from the form prescribed under IC 3-8-2;

(2) signed by the candidate; and

(3) that designates which judgeship the candidate seeks. A declaration that does not include the designation shall be rejected by the election division or by the Indiana election commission under IC 3-8-1-2.

(c) To be eligible for election under this section, a candidate for a judgeship must be:

(1) a resident of St. Joseph County; and

(2) admitted to the practice of law in Indiana.

(d) If a person:

(1) files a declaration of candidacy under subsection (b); and

(2) subsequently ceases to be a candidate after the final date for filing a declaration under subsection (b);

the election division may accept the filing of additional declarations of candidacy for that judgeship until not later than noon August 1.

(e) All candidates for each respective judgeship shall be listed on the general election ballot:

(1) in the form prescribed by IC 3-11; and

(2) without party designation.

The candidate who receives the highest number of votes for each judgeship shall be elected to that office.

(f) IC 3, where not inconsistent with this chapter, applies to elections under this chapter.

SECTION 7. IC 33-33-71-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 36. (a) When a vacancy occurs in the St. Joseph superior court **created by the departure of a judge before the expiration of the judge's term of office, the clerk of the court shall promptly notify the chairman of the commission of the vacancy. The chairman shall call a meeting of the commission within ten (10) days following this notice. The commission shall submit its nominations of five (5) candidates for each vacancy and certify them to the governor as promptly as possible, and not later than sixty (60) days after the vacancy occurs. When it is known that a vacancy will occur at a definite future date within the term of the serving governor, but the vacancy has not yet occurred, the clerk shall notify the commission immediately. The commission may within fifty (50) days of the notice of vacancy make its nominations and submit to the governor the names of five (5) persons nominated for the forthcoming vacancy.**

(b) Meetings of the commission shall be called by the chairman or, if the chairman fails to call a necessary meeting, upon the call of any four (4) members of the commission. The chairman, whenever the

1 chairman considers a meeting necessary, or upon the request by any
 2 four (4) members of the commission for a meeting, shall give each
 3 member of the commission at least five (5) days written notice by mail
 4 of the time and place of every meeting unless the commission at its
 5 previous meeting designated the time and place of its next meeting.

6 (c) Meetings of the commission must be held at a place in the St.
 7 Joseph County courthouse in South Bend as the clerk of the St. Joseph
 8 superior court may arrange.

9 (d) The commission shall act only at a meeting and may act only by
 10 the concurrence of a majority of its members attending a meeting. Four
 11 (4) members are required to constitute a quorum at a meeting. The
 12 commission may adopt reasonable and proper rules and regulations for
 13 the conduct of its proceedings and the discharge of its duties.

14 SECTION 8. IC 33-33-71-40 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 40. (a) A vacancy
 16 occurring in the St. Joseph superior court **created by the departure of**
 17 **a judge before the expiration of the judge's term of office** shall be
 18 filled by appointment of the governor from a list of nominees presented
 19 to the governor by the judicial nominating commission. If the governor
 20 fails to make an appointment from the list within sixty (60) days from
 21 the day it is presented to the governor, the appointment shall be made
 22 by the chief justice or the acting chief justice of the supreme court from
 23 the same list presented to the governor.

24 (b) The governor shall make all appointments to the St. Joseph
 25 superior court without regard to the political affiliation of any of the
 26 nominees submitted to the governor. In the interest of justice, the
 27 governor shall consider only those qualifications of the nominees
 28 included in section 37 of this chapter.

29 (c) If the St. Joseph County judicial nominating commission, by a
 30 vote of any five (5) of its members, determines that, of the persons
 31 considered for any existing or expected vacancy in the St. Joseph
 32 superior court, less than five (5) are qualified for judicial office, within
 33 the scope of this chapter, the commission shall certify that
 34 determination to the governor together with the name or names of the
 35 person or persons found to be qualified under this chapter. In that
 36 event, the governor, chief justice, or acting chief justice shall make the
 37 selection or, if only one (1) name is submitted, make the appointment.

38 SECTION 9. IC 33-33-71-41 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 41. (a) An appointment
 40 by the governor, chief justice, or acting chief justice, as required by
 41 section 40 of this chapter, to the St. Joseph County superior court shall
 42 take effect immediately if a vacancy exists at the date of the
 43 appointment. The appointment shall take effect on the date the vacancy
 44 is created if a vacancy does not exist on the date of the appointment.

45 (b) **A judge appointed under section 40 of this chapter serves**
 46 **during the unexpired part of the judge's predecessor's term in**
 47 **office.**

48 SECTION 10. IC 33-33-71-68 IS AMENDED TO READ AS
 49 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 68. (a) Whenever a
 50 judge of a St. Joseph County court is retired by the supreme court under
 51 this chapter and on the grounds set forth in ~~sections 44 and section 46~~

of this chapter, the judge is considered to have retired voluntarily. In these situations, this chapter may not be construed to authorize any encroachment upon or impairment of any rights of the judge or the judge's surviving spouse under any constitutional or statutory retirement program.

(b) A judge of a St. Joseph County court who is removed from office by the supreme court on those grounds set forth in ~~sections 44 and~~ **section 46** of this chapter is ineligible for judicial office and, pending further order of the supreme court, shall be suspended from the practice of law in Indiana.

SECTION 11. IC 33-35-1-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6. A city or town that has not established a court under this chapter may enter into an interlocal agreement under IC 36-1-7 with a city or town that:**

(1) has established a court under this chapter; and

(2) is located in the same judicial circuit as the city or town that has not established a court;

to hear and dispose of ordinance violations that would otherwise come under the jurisdiction of a court established by the city or town under this chapter.

SECTION 12. IC 33-35-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3. A city court has the following jurisdiction over crimes, infractions, and ordinance violations:**

(1) Jurisdiction of all violations of the ordinances of the city.

(2) Jurisdiction of all misdemeanors and all infractions.

(3) If the city that established the city court has entered into an interlocal agreement described in IC 33-35-1-6 with another city or a town, jurisdiction of all other ordinance violations described in the interlocal agreement.

SECTION 13. IC 33-35-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) A town court has exclusive jurisdiction of all violations of the ordinances of the town.**

(b) A town court also has jurisdiction of all misdemeanors and all infractions.

(c) If the town that established the town court has entered into an interlocal agreement described in IC 33-35-1-6 with a city or another town, the town court has jurisdiction of all other ordinance violations described in the interlocal agreement.

SECTION 14. IC 33-36-2-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. A city or town that has not established a court under IC 33-35-1 or an ordinance violations bureau under this chapter may enter into an interlocal agreement under IC 36-1-7 with a municipal corporation that:**

(1) has established an ordinance violations bureau under this chapter; and

(2) is located in the same judicial circuit as the city or town that has not established a court or an ordinance violations bureau;

1 to hear and dispose of ordinance violations that would otherwise
 2 come under the jurisdiction of an ordinance violations bureau
 3 established by the city or town under this chapter.

4 SECTION 15. IC 33-36-3-7 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) **Subject to**
 6 **subsection (b)**, all sums collected by the violations clerk as civil
 7 penalties for ordinance violations shall be accounted for and paid to the
 8 municipal corporation as provided by law.

9 (b) **If a city or town that has not established a court under**
 10 **IC 33-35-1 or an ordinance violations bureau under IC 33-36-2 has**
 11 **entered into an interlocal agreement described in IC 33-36-2-4 with**
 12 **a municipal corporation, the sums collected by the violations clerk**
 13 **that involve the city or town that has not established a court or an**
 14 **ordinance violations bureau shall be accounted for and paid as**
 15 **provided in the interlocal agreement.**

16 SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE
 17 JULY 1, 2009]: IC 33-33-71-42; IC 33-33-71-43; IC 33-33-71-44.

18 SECTION 17. [EFFECTIVE JULY 1, 2009] (a) **Notwithstanding**
 19 **the amendment and repeal of provisions in IC 33-33-71 by this act,**
 20 **the term of a judge in office in the St. Joseph superior court on**
 21 **June 30, 2009, does not terminate until the date that the term**
 22 **would have terminated under the law in effect on June 30, 2009.**

23 (b) **The initial election under IC 33-33-71, as amended by this**
 24 **act, to fill a judge's position on the St. Joseph superior court is the**
 25 **general election immediately preceding the date on which the term**
 26 **of the judge occupying the position on June 30, 2009, would have**
 27 **terminated under the law in effect on June 30, 2009.**

28 (c) **This SECTION expires January 2, 2015.**

29 SECTION 18. [EFFECTIVE JULY 1, 2009] (a) **The judicial**
 30 **nominating commission shall, in accordance with IC 33-27-3,**
 31 **nominate three (3) candidates for each of the three (3) judgeships**
 32 **for the court of appeals - Sixth District created by IC 33-25-1, as**
 33 **amended by this act. The commission shall submit the nominations**
 34 **to the governor before May 1, 2011.**

35 (b) **The governor shall appoint the three (3) initial judges of the**
 36 **court of appeals - Sixth District from the list of nominees submitted**
 37 **by the judicial nominating commission under subsection (a) before**
 38 **July 1, 2011. The effective date of the appointments made under**
 39 **this subsection is July 1, 2011.**

40 (c) **The Indiana department of administration, with the**
 41 **approval of the chief judge of the court of appeals, shall arrange**
 42 **for facilities for the court of appeals - Sixth District in Indianapolis**
 43 **before July 1, 2011.**

44 (d) **This SECTION expires July 2, 2011.**

(Reference is to EHB 1491 as printed April 10, 2009.)

Conference Committee Report
on
Engrossed House Bill 1491

Signed by:

Representative Fry
Chairperson

Senator Charbonneau

Representative Walorski

Senator Arnold

House Conferees

Senate Conferees